United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-1698

To be argued by
DAVID A. CUTNER

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1698

UNITED STATES OF AMERICA,
Appellee,

—v.—

WILSON TORRES,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

DAVID A. CUTNER,
JOHN D. GORDAN III,
Assistant United States Attorneys,
Of Counsel.

TABLE OF CONTENTS

TABLE OF CASES

PAGE

OTHER AUTHORITIES CITED

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1698

UNITED STATES OF AMERICA,

Appellee,

—v.—

WILSON TORRES,

Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Wilson Torres appeals from a judgment of conviction entered on May 17, 1974, in the United States District Court for the Southern District of New York, following a three-day trial before the Honorable Inzer B. Wyatt, United States District Judge, and a jury.

Indictment 72 Cr. 391 was filed on April 7, 1972, in two counts. Count One charged Wilson Torres, Jose Sanjurjo, Jesus Sanjurjo, Hector Ortiz, and others to the Grand Jury unknown with conspiring to distribute narcotics, in violation of Section 846 of Title 21, United States Code. Torres was not named in Count Two.

Torres' trial * commenced on March 25, 1974 and concluded on March 27, 1974, when the jury returned a verdict of guilty on Count One. On May 17, 1974, Judge Wyatt sentenced Torres to imprisonment for one year. Torres is presently serving that sentence.

Statement of Facts

The Government's Case

Jose Guzman, a New York City Police Detective, testified that on January 11, 1972, in an undercover capacity, he made a telephone call to Jose Sanjurjo, a/k/a "Negro," and told him that he was interested in purchasing some heroin. Sanjurjo agreed to meet Guzman at 121st Street and Second Avenue at 7:00 p.m. that same day. (Tr. 33-35.)

Guzman met Sanjurjo at the appointed place, and Sanjurjo told him that he could purchase an ounce of heroin for $1,000. The transaction was subsequently arranged for January 18, 1972 at the same location. When Guzman arrived to make the purchase, defendant Hector Ortiz emerged from a club at 2353 Second Avenue and told Guzman that Sanjurjo was in the club and that the one ounce of heroin was ready. Guzman then met Sanjurjo on the sidewalk in front of the club, and Sanjurjo said that the deal would go through Ortiz. Guzman got some money out of the trunk of his car and returned to the front of 2353 Second Avenue. Ortiz gave Guzman a package, but Guzman told Ortiz and Sanjurjo that he did not want to

---

* Jesus Sanjurjo was convicted on Count One at a trial in September of 1972 and was sentenced on October 27, 1972 to six months imprisonment; Jose Sanjurjo, Ortiz, and Torres were fugitives at the time of that trial. Jose Sanjurjo entered a plea of guilty on Count One on March 21, 1974, and on May 17, 1974, was sentenced to eighteen months imprisonment. Hector Ortiz entered a plea of guilty on both counts on March 25, 1974, and on May 17, 1974, was sentenced to imprisonment for one year.

count money on the street. Guzman and Ortiz then went into the hallway at 2353 Second Avenue, where Guzman paid Ortiz $1,000. (Tr. 35-41.)

On February 14, 1972, Guzman returned to 121st Street and Second Avenue, where he spotted Ortiz coming out of the club. Ortiz asked Guzman if he wanted to purchase some "material," and Guzman replied that he would purchase one-eighth of a kilogram of heroin if the price were right. Ortiz said that Jose Sanjurjo was in Puerto Rico, but that Sanjurjo had left a close relative in charge of the business and that Guzman should return later that night. (Tr. 45-47.)

Guzman returned at about 9:45 p.m., and Ortiz got into his car. Jesus Sanjurjo approached the car and told Guzman that the one-eighth kilogram of heroin would cost $3,600. Guzman replied that he would take the package, but that he wanted to speak with Jose Sanjurjo first. Jesus Sanjurjo then got into a white car and drove off. He returned shortly and said that it was Jose Sanjurjo's instruction that if Guzman wanted to purchase the heroin he would have to deal with Jesus Sanjurjo. Guzman insisted on seeing Jose Sanjurjo, and a brief argument ensued. Jesus Sanjurjo drove off again and then returned to say that Jose Sanjurjo was waiting around the corner on 120th Street. (Tr. 48-49.)

Guzman walked down Second Avenue to 120th Street and, when he turned the corner, he saw the white car that Jesus Sanjurjo had been driving. Jose Sanjurjo was standing on the sidewalk next to the white car, and Wilson Torres was seated in it on the curb side. When Guzman approached Jose Sanjurjo beside the white car, Sanjurjo said that he would sell Guzman the one-eighth kilogram of heroin, but that in the future Guzman would have to deal with Jesus Sanjurjo. Guzman returned to his car and was met by Ortiz and his wife, Lillian. Ortiz stated that Guzman should

drive with Lillian to 100th Street and First Avenue. (Tr. 49-55.)

Guzman drove to 100th Street and First Avenue, followed by the white car, which contained Jesus Sanjurjo and Wilson Torres. When Guzman parked, Torres got into the back seat of Guzman's car and told Guzman to drive back to 120th Street and First Avenue, where Torres said he was going to pick up the heroin. Guzman expressed annoyance at all of the driving around. Lillian Ortiz or Torres replied that their "connection" had to take care of himself because the deal involved a large quantity of heroin, and that Jesus Sanjurjo would be following them to make sure that Guzman was not being followed by the police. (Tr. 55-58, 98.)

At 120th Street and First Avenue, Lillian Ortiz and Torres got out of Guzman's car. Torres said that he would bring the package, and then he and Lillian Ortiz walked away. Lillian Ortiz returned a short time later and, after a conversation with Guzman, the two of them drove to 96th Street and Second Avenue. Torres and others followed in the white car. After Guzman parked at 96th Street, Torres again appeared and said that he was going to bring the package. Then Torres and Lillian left Guzman's car. Guzman waited for a half-hour or so, but nobody brought the heroin. While Guzman waited, uniformed police appeared on the scene on two separate occasions because of an accident and a stalled car. (Tr. 59-60, 99-102.)

On February 22, 1972, Guzman went again to 121st Street and Second Avenue. He pulled up parallel to the white car in front of 2353 Second Avenue. Seated in the white car were Jesus Sanjurjo and Torres. Sanjurjo got out of the car, negotiated, in Torres' hearing, with Guzman for the purchase of one ounce of heroin, and told Guzman to return that evening. Guzman did so, but nobody appeared to meet him. (Tr. 61-63.)

Surveillance agents John Miller and Lawrence McDonald corroborated Guzman as to the dates, times, and places of Guzman's meetings with the defendants. (Tr. 86-111, 137-157.) Miller also testified that Torres was arrested on February 24, 1972 and brought before a United States Magistrate, who informed him of the charges against him. Shortly thereafter, Torres made bail, and signed an appearance bond. After indictment, however, a bench warrant issued for his arrest. Miller and Police Officer Calvin Holmes testified to their attempts to locate Torres during the period of September 1972 to January 1974, when Torres was finally apprehended in Puerto Rico. (Tr. 105-110, 182-186, GX 3.)

The Defense Case

Defendant Wilson Torres did not testify, and no defense witnesses were called.

ARGUMENT

POINT I

The evidence was more than sufficient to support the verdict that Torres was a member of the conspiracy charged.

The undisputed evidence at trial was more than sufficient to support the jury's verdict that defendant Torres was a member of the conspiracy charged in the indictment. Contrary to Torres' assertion that he committed only a single act of promising to deliver heroin, the evidence showed a far more substantial criminal involvement. Torres was present on the evening of February 14, 1972 when the undercover agent negotiated with Jose Sanjurjo for the purchase of one-eighth of a kilogram of heroin, and Torres stated to the undercover agent on three occasions that

evening that he would deliver the heroin. When the agent was told to drive to 100th Street and First Avenue, Torres followed him to that location with Jesus Sanjurjo. Torres got into the agent's car and told the agent to drive to 120th Street and First Avenue. Torres said that he would deliver the heroin and then participated in a conversation with the agent and Lillian Ortiz which included statements that the "connection" had to protect himself because the deal involved a large quantity of heroin and that Jesus Sanjurjo was following the agent to make sure that the agent was not being followed by police. Upon arrival at 120th Street and First Avenue, Torres again said that he would deliver the heroin. Shortly thereafter, the agent was told to drive to 96th Street and Second Avenue, and Torres drove with Jesus Sanjurjo to that location. Once again, Torres approached the agent's car and told the agent that he would deliver the heroin.

Torres' contention that he performed only a "single act" is thus contrary to the proof at trial. In any event, the issue is not whether the defendant performed one, two, three acts or more, but whether a jury might reasonably infer from the defendant's act or acts knowing participation in an unlawful enterprise. *United States* v. *Aviles*, 274 F.2d 179 (2d Cir.), *cert. denied*, 362 U.S. 974 (1960). The so-called "single act" rule can benefit a defendant "only when there is no independent evidence tending to prove that the defendant had some knowledge of the broader conspiracy and when the single transaction is not in itself one from which such knowledge might be inferred." *United States* v. *Agueci*, 310 F.2d 817, 836 (2d Cir. 1962), *cert. denied*, 372 U.S. 959 (1963).

Torres' association with the ring leader of the conspiracy, Jose Sanjurjo, his presence in the conspiratorial conversations, his knowledge that a large quantity of heroin was to be delivered, his participation in the aborted delivery

on February 14th, and his thrice-made statement to Guzman during the automobile trips preparatory to that delivery that he would be obtaining the heroin establish that Torres knew of the substantial scope of the illegal conspiracy, and participated significantly in its execution. *United States* v. *D'Amato*, 493 F.2d 359 (2d Cir. 1974); *United States* v. *Marrapese*, 486 F.2d 918 (2d Cir. 1973), *cert. denied*, 42 U.S.L.W. 3541 (March 26, 1974); *United States* v. *Barrera*, 486 F.2d 333 (2d Cir. 1973); *United States* v. *Pui Kan Lam*, 483 F.2d 1202, 1208 (2d Cir. 1973); *United States* v. *Wisneiwski*, 478 F.2d 274, 279-280 (2d Cir. 1973); *United States* v. *Ruiz*, 477 F.2d 918 (2d Cir.), *cert. denied*, 414 U.S. 1004 (1973); *United States* v. *Calabro*, 449 F.2d 885 (2d Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972); *United States* v. *Calarco*, 424 F.2d 657 (2d Cir.), *cert. denied*, 400 U.S. 824 (1970); *United States* v. *Geaney*, 417 F.2d 1116 (2d Cir. 1969), *cert. denied sub nom. Lynch* v. *United States*, 397 U.S. 1028 (1969).* The fact that there was no proof linking Torres to the conspiracy at its inception, *i.e.*, the January 18th transaction, is immaterial. *United States* v. *Sansone*, 231 F.2d 887, 893 (2d Cir.), *cert. denied*, 351 U.S. 987 (1956). The contention that Torres never delivered or handled narcotics is similarly immaterial. *Yates* v. *United States*, 354 U.S. 298, 332-334 (1957).

---

* *United States* v. *DeNoia*, 451 F.2d 979, 981 (2d Cir. 1971), cited by defendant, provides no support for his position. The only proof against DeNoia was that he "delivered a bag containing heroin to [defendant] Pavia," which the Court found to be "not the kind of single transaction which itself supports an inference of knowledge of a broader conspiracy." But in *DeNoia* the Court sustained the conspiracy convictions of two other defendants whose involvement was also limited to a "single transaction." The only proof against one Jacovino was that he and Pavia sold heroin described as "French goods" to an agent. The sole proof against the other, Scorzello, was that several months later he told the agent that he and Pavia could supply any quantity of heroin from France. Their conspiracy convictions were sustained, on far less evidence than in this case, because their respective "single acts" were "sufficient for an inference that each knew he was involved in a criminal enterprise of substantial scope, which was likely to involve other persons." 451 F.2d at 981.

POINT II

The trial court properly exercised its discretion in permitting the Government to treat Ortiz as a hostile witness and to impeach his testimony.

At trial, the Government called as a witness Hector Ortiz, a co-defendant who pleaded guilty and was awaiting sentence. But before Ortiz was called in the presence of the jury, a hearing was conducted to determine whether the witness would be in contempt by refusing to answer the questions put to him.* At the hearing, Ortiz was initially contemptuous, but then started answering the questions. Some of his answers, however, surprised the prosecutor and were inconsistent with the witness' prior statements. When the Government sought to cross-examine the witness, Torres objected on the ground that "the issue here is whether or not the man is going to be contemptuous or not." Judge Wyatt then ruled that, since Ortiz had been answering the questions, the Government could call him as a witness before the jury and treat him as a hostile witness and impeach him with his prior inconsistent statements. (Tr. 133-134.)

Before the jury, Ortiz testified that he was involved in heroin transactions on January 18, 1972 and February 14, 1972 with Jose Sanjurjo and Jesus Sanjurjo. He testified that he did not remember if anyone else were involved and then denied stating to federal agents in the presence of his lawyer the previous week that defendant Torres was involved and that Torres was employed by Jose Sanjurjo as a narcotics courier. Ortiz also testified that he knew defendant Torres only by sight. (Tr. 160-168, 177-179.)

The Government then called Assistant United States Attorney Robert Hemley, who testified that he had seen

---

* This procedure was suggested in *United States* v. *Sanchez*, 459 F.2d 100, 103 (2d Cir.), *cert. denied*, 409 U.S. 864 (1972).

Ortiz and Torres shake hands, embrace, and converse for five minutes the previous day. (Tr. 181.)

While Torres protests at great length any restrictions on his own cross-examination of witnesses,* he apparently would deny the Government the necessary mode of examination, at a hearing or at trial, for attempting, albeit unsuccessfully, to obtain the truth from the witness Ortiz.

It is elementary that the scope of examination and impeachment of witnesses is within the sound discretion of the trial judge. *United States* v. *Blackwood*, 456 F.2d 526, 529 (2d Cir.), *cert. denied*, 409 U.S. 863 (1972). And, as Judge Wyatt observed at the trial, "We have no rule in this Circuit that you can't impeach your own witness or that you vouch for your witness" (Tr. 163). *United States* v. *Freeman*, 302 F.2d 347, 351 (2d Cir. 1962), *cert. denied*, 375 U.S. 958 (1963). *Accord*, Rule 607, Proposed Rules of Evidence for the United States Courts and Magistrates, 51 F.R.D. 315, 388 (1971); 3A Wigmore, Evidence § 907 (Chadbourn rev. 1970); McCormick, Evidence § 38 (2d ed. 1972). No abuse of discretion is alleged in Judge Wyatt's having declared Ortiz a hostile witness, nor could any such contention be sustained. Similarly, there is no allegation that the Government lacked a good faith basis for the questions put to Ortiz. See *United States* v. *Pacelli*, 491 F.2d 1108, 1120 (2d Cir. 1974).

Torres' assertion that there was no foundation for the questions put to Ortiz is mere sophistry. Ortiz' testimony that he did not know who was going to deliver the heroin and that he did not know Torres** (Tr. 132, 163) provided a clear basis for impeaching Ortiz with his prior statements that Torres was supposed to deliver the one-eighth kilogram

---

* Brief at 19-25.

** Later, in his testimony before the jury, Ortiz said he knew Torres "by sight" (Tr. 167).

of heroin and that Torres worked for Jose Sanjurjo as a narcotics courier. Had Ortiz affirmed his prior statements and their truth, his answers would have been relevant and admissible as substantive evidence of Torres' guilt. *United States* v. *Klein*, 488 F.2d 481, 483 (2d Cir. 1973). Since he denied having made the statements, Judge Wyatt properly gave the jury a strong limiting instruction at defense counsel's request and to which no exception was taken (Tr. 175-177; see also Tr. 241).

Defendant's contention that the testimony of Assistant United States Attorney Hemley was improper is also incorrect. Contrary to defendant's characterization that Hemley was "prosecuting this case," Hemley played no part in the proceedings except to sit at the Government's counsel table. The Government had no reason to believe that Hemley would be called upon to testify. It was only after Ortiz unexpectedly testified that he knew the defendant "only by sight" that Hemley's observations of Ortiz and Torres embracing in the courtroom the prior day became pertinent. There was nothing improper about his appearing as a witness under these circumstances. *United States* v. *Zane*, 495 F.2d 683, 693-694 (2d Cir. 1974).* Moreover, the Government called Hemley to give very limited testimony, the full text of which is set forth below:

> "Direct Examination by Mr. Cutner:
>
> Q. Mr. Hemley, were you present in this courtroom yesterday morning at approximately 10:15 a.m.?
> A. Yes, I was.

---

* The circumstances here are far removed from the situation in *United States* v. *Pepe*, 247 F.2d 838 (2d Cir. 1957), cited by Torres. In that case, the prosecutor who was actually conducting the trial took the stand to impeach the testimony of a witness who had failed to make a critical identification of the defendant. The Court held that the prosecutor's testimony was prejudicial, *not* merely because he was a prosecutor, but because he misled the jury into believing that the witness had made a conclusive prior identification when this was by no means clear.

Q. Could you tell us what you saw at that time?
A. At that time I saw the defendant enter the courtroom. Mr. Hector Ortiz, the man who previously testified, was already in the courtroom. He approached the defendant, they shook hands, they embraced each other's arms and stood in conversation, as much as I could observe, for approximately four minutes or five minutes.

Mr. Cutner: No further questions.

The Court: All right.

Mr. Naftalis: No questions." (Tr. 181.)

Finally, Torres' attacks on the prosecutor's summation are baseless. The Government's argument that Ortiz' and Torres' affectionate conversation in the courtroom showed Ortiz' motive to give false testimony, according to Torres, ". . . was improperly asking the jury to accept prior inconsistent statements as substantive evidence . . ." (Brief at 16). Torres misconstrues the prosecutor's argument, but assuming the doubtful proposition that the argument Torres claims was made would be more than harmless error, *United States* v *Pacelli*, 470 F.2d 67, 69-70 (2d Cir. 1972), *cert. denied*, 410 U.S. 983 (1973), the essential point is that this evidence, while impeaching Ortiz' testimony, was substantively admissible in any event. *United States* v. *Diggs*, Dkt. No. 73-2793 (2d Cir., May 8, 1974), slip op. at 3335; *United States* v. *Garelle*, 438 F.2d 366, 368-70 (2d Cir. 1970), *cert. dismissed*, 401 U.S. 967 (1971).

Likewise, Torres' claim that the prosecution improperly suggested to the jury in summation that Torres was selling narcotics is without merit. We submit that a person who is shown by the evidence to be significantly involved in a conspiracy to sell narcotics is a seller of narcotics, and "there is no basis to claim reversible error simply because the language was blunt and to the point." *United States* v. *Gottlieb*, 493 F.2d 987, 994 (2d Cir. 1974). Moreover, no objection was taken on this ground, and the point cannot be raised now. *United States* v. *Briggs*, 457 F.2d 908, 912 (2d Cir.), *cert. denied*, 409 U.S. 986 (1972); *United*

States v. *Perez*, 426 F.2d 1073, 1081 (2d Cir. 1970), *aff'd*, 402 U.S. 146 (1971). In any event, the jury could hardly have received a wrong impression about the nature of the evidence against Torres since the entire trial, from opening statements through summations, proceeded on the express basis that there was no direct proof that Torres participated in a consummated sale of narcotics. (*See especially*, Tr. 17, 26-28, 203-217, 234-238.)

POINT III

The trial court properly exercised its discretion in refusing to admit cumulative evidence on defendant's re-recross-examination of Guzman, and the prosecutor's summation was proper.

On direct examination at Torres' trial Guzman testified that on February 14, while he, Torres and Lillian Ortiz were driving from 100th Street to 120th Street to pick up the heroin, Guzman told the other two that he was getting annoyed with all of the driving around because he was afraid that his car was going to get "burned." According to Guzman, either Torres or Lillian Ortiz responded that "the connection had to take care of himself because this was no little package . . ." (Tr. 58). On cross examination, Torres established that Guzman's report of the events of that evening, which was prepared two days thereafter, mentioned no such conversation in Torres' presence, though Guzman reiterated that his testimony was accurate (Tr. 74-76). On redirect, Guzman was again asked about any such conversations in the presence of both Torres and Ortiz, and he repeated that he had told them of his annoyance over driving from one place to another because he was fearful of getting "burned" (Tr. 79). On recross, Torres showed Guzman the transcript of his testimony at the trial of Jesus Sanjurjo in September of 1972, and secured an admission that there was no mention in the transcript of ". . . any conversation

you had where you told Mr. Wilson Torres that you were afraid of getting burned . . ." (Tr. 81-83). The Government then brought out that Guzman was not ". . . asked during that trial for an account of your conversation with Wilson Torres on the evening of February 14, 1972 . . ." (Tr. 83). Then, on re-recross, defense counsel offered the transcript of Guzman's entire prior testimony:

> "Mr. Naftalis: . . . "I didn't claim he was asked about it [Guzman's conversation with Wilson Torres and Lillian Ortiz in the car]. What I claim is that he recounted all of his conversations and dealings he had on February 14, 1972 with everybody in the world who was involved in this case and he recounted a number of conversations with Mr. Torres in detail and this one was conveniently left out.
>
> The Court: "I don't want to hear anything more from either one of you about the subject. Drop it at once and let's go on, and I won't accept this offer. Just strike it out.
>
> Mr. Naftalis: I have nothing else, your Honor" (Tr. 85-86).

Torres now claims that Judge Wyatt improperly curtailed his re-recross examination of Guzman by refusing to admit the transcript of Guzman's prior testimony. The contention is without merit, for Judge Wyatt did no more than exercise his "extensive discretion" in controlling re-recross examination ". . . after a full and searching cross-examination." *United States* v. *Kahn*, 472 F.2d 272, 281 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973). The matter of this particular conversation had already been covered on direct examination, cross examination, redirect examination and recross examination. Defense counsel had already elicited that Guzman's report of his activities on February 14 did not mention such a conversation. Defense counsel had already secured Guzman's admission that there was no mention in his testimony at the prior trial of the conversa-

tion in which Guzman expressed fear of being "burned." The usefulness of that admission to the defense would have been significantly blunted had defense counsel been permitted to put the transcript in, for the transcript shows that Guzman did testify that Torres was present for the part of the conversation involving the need for the connection to be careful and also establishes that Guzman was not specifically asked about the conversation.* In any event, there was more than enough evidence in the record on this point for the jury to judge whether Guzman had fabricated his testimony about the conversation in the car, *United States* v. *Blackwood*, *supra*, 456 F.2d at 530, and defense counsel made ample use of it in summation. (Tr. 209-212.)

Finally, Torres asserts that the prosecutor's summation was improper because the prosecutor said, "I submit that Guzman's testimony was wholly credible. There is no reason in the world why you should disregard his testimony" (Tr. 230). No objection was taken. There was no impropriety. *Compare Lawn* v. *United States*, 355 U.S. 339, 359-360 n. 15 (1958), and *United States* v. *Davis*, 487 F.2d 112, 125 (5th Cir. 1973) *with United States* v. *Briggs*, *supra*, 457 F.2d at 912, and *Hall* v. *United States*, 419 F.2d 582, 585 (5th Cir. 1969).**

---

* "Q. Tell us what you did. A. Once I parked on 100th Street and First Avenue I was approached by Wilson Torres who then instructed me to drive to 120th Street and First Avenue. While I was driving Lillian told me that the connection had to be careful, that I wasn't being followed. As we arrived at 120th Street and First Avenue Lillian and Wilson Torres left my car and proceeded east on 120th Street." (*United States* v. *Jesus Sanjurjo*, 72 Cr. 391 (S.D.N.Y. 1972) (Tr. gab-10)).

** Torres also claims that Guzman's answers to questions about the completeness of his testimony at Torres' trial concerning his conversations with Jesus Sanjurjo were misleading when compared to the transcript of his testimony at Jesus Sanjurjo's trial. Assuming *arguendo* that his interpretation of Guzman's testimony is correct, defense counsel could have brought that out with the

[Footnote continued on following page]

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

DAVID A. CUTNER,
JOHN D. GORDAN III,
Assistant United States Attorneys, Of Counsel.

---

transcript he had (Tr. 81-82) of Guzman's testimony at Sanjurjo's trial; his basis for wanting to introduce the transcript, however, related only to the conversation between Guzman, Torres and Ortiz (Tr. 85-86). In any event, the prosecutor's observation in summation (Tr. 231) which Torres also attacks, was perfectly accurate.

★ U. S. Government Printing Office 1974—614—205 / 394—74

AFFIDAVIT OF MAILING

'ATE OF NEW YORK)
) ss.:
)UNTY OF NEW YORK)

JOHN D. GORDAN III being duly sworn, eposes and says that he is employed in the office of he United States Attorney for the Southern District f New York.

That on the 7th day of August, 1974 he served 2 copies of the within brief by placing the ame in a properly postpaid franked envelope addressed:

GARY P. NAFTALIS, ESQ.
1 Rockefeller Plaza
New York, N. Y.

And deponent further says that he sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

John D. Gordan III

Sworn to before me this

7th day of August, 1974

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1975